



17 JUL 2007

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In re Application of
OGILVY, Ian Charles
Application No.: 10/585,070
PCT No.: PCT/AU00/00831
Int. Filing Date: 10 July 2000
Priority Date: 08 July 1999
Docket No.: CRD-0010
For: A SYSTEM AND METHOD FOR THE
PROVISION OF INFORMATION WITHIN
A PREDETERMINED LOCALITY

DECISION ON
PETITION UNDER
37 CFR 1.47(b)

This is a decision on applicant's "Petition Under 37 CFR 1.47(b)," filed in the United States Patent and Trademark Office (USPTO) on 14 May 2007.

BACKGROUND

On 16 October 2006, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 14 May 2007, applicant submitted a petition under 37 CFR 1.47(b) accompanied by the fee for a five month extension of time.

DISCUSSION

Applicant has filed a change of address by the purported assignee of this application. As applicant has not established that Cardsoft, Inc. has the right to control prosecution of this application by filing a grantable petition under 37 CFR 1.47(b). Further, Donald McPhail has not filed a change of correspondence address in the application. The address of record remains unchanged. As a courtesy, this decision has been copied to the Duane Morris address.

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17(g), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Items (1), (3), and (6) have been met. (1) The \$200 petition fee will be charged to the deposit account no. 04-1679, as authorized. (3) Applicant states the last known mailing address of Mr. Ian Charles Ogilvy as Suite 306, 39 East Esplande; Manly, New South Wales, Australia 2095. (6) Applicant has demonstrated that irreparable harm will result if the application is not permitted to proceed.

Item (2) has not been satisfied. Applicant claims they have been unable to locate Mr. Ogilvy after a diligent effort. However, applicant is currently sending communications for Mr. Ogilvy to the unverified address of his possibly deceased mother at which applicant does not claim Mr. Ogilvy ever lived. Applicant is not specific about dates of communications, what was sent or efforts to locate a valid, current address for Mr. Ogilvy. Documentary evidence, including copies of internet searches, copies of what is sent and return receipts for the package should be included with a renewed petition. MPEP 409.03(d). Additionally a detailed statement regarding attempts to contact Mr. Ogilvy is required.

Item (4) has not been satisfied. The declaration is not in compliance with 37 CFR 1.497(a)-(b). It lists Mr. Sweet as the sole inventor of this application. However, the inventor on the international application and the inventor acknowledged in this petition is Ian Charles Ogilvy. The declaration must be executed by the 37 CFR 1.47(b) applicant on behalf of the inventor.

Item (5) has not been met as applicant has not provided sufficient evidence of proprietary interest in the application. Applicant has provided an assignment from Mr. Ogilvy to CardSoft International Pty Limited for some patent applications. The assignment does not cover this application and the assignment is to CardSoft International Pty Limited, not CardSoft, Inc. If applicant is claiming that the assignment covers the priority application, the priority application is not listed by the application number listed on the international publication. Further, the specification and claims of the priority document are not identical to the international publication. Additionally, applicant must show the chain of title between CardSoft International Pty Limited and CardSoft, Inc. In the absence of an assignment, applicant must still prove sufficient proprietary interest. See MPEP 409.03(f).

CONCLUSION

For the above reasons, applicant's petition under 37 CFR 1.47(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)". No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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